

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION No. 4610 OF 2018**

M/s. Expert Print and Ors.

...Petitioners

Versus

The State of Maharashtra & Anr.

...Respondents

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Mr.Jitendra B. Mishra for the Petitioners.

Mr.Vinod Chate, APP for Respondent No.1-State.

Mr.Prerak Choudhary for Respondent No.2.

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**CORAM : MRS. MRIDULA BHATKAR, J.**

**DATE : 21 FEBRUARY 2019**

**P.C.:**

1. In this Petition, the order dated 3<sup>rd</sup> September, 2018 passed by the learned Metropolitan Magistrate, 7<sup>th</sup> Court, Dadar, Mumbai in C.C. No. 993/SS/2015, rejecting the application filed by the accused for recalling of the witness i.e., complainant as per provisions of section 311 of the Code of Criminal Procedure (for short "Cr.P.C."), is rejected.

2. The complainant is a respondent No.2 in this Petition. The complaint was filed for the cheques amounts of Rs.75,90,100/-. In the year 2015, the examination-in-chief of the complainant had been over. The affidavit of

evidence had been filed on 16<sup>th</sup> March, 2016. The cross-examination of the complainant was concluded on 4<sup>th</sup> January, 2017 and the evidence of the complainant was closed on 24<sup>th</sup> January, 2017. In between, written arguments was filed by the complainant, marked at exhibit 56. However, on 3<sup>rd</sup> May 2018, the petitioner/accused moved an application under section 311 of the Cr.P.C., as new advocate has come on record. The complainant filed reply opposing the said application. Rejoinder was filed by the petitioner/accused. The learned Magistrate rejected the said application on 3<sup>rd</sup> September, 2018. Hence, this Writ Petition.

3. The learned counsel for the petitioner/accused has submitted that the accused had taken defence that the cheques were given for the purpose of security. The said cheques were not against any legal liability. He has relied on the reply given by the petitioner/accused to the statutory notice wherein the defence of handing over the cheques towards security was taken by the petitioner/accused. He has pointed out the cross-examination of the complainant, which was concluded on 4<sup>th</sup> January, 2017 in which he stated only one sentence that, "it is not true to say that, the disputed cheques were given to us by accused for security purpose", which is appearing in paragraph No.2 of the cross-examination. He has

further submitted that it is necessary for the petitioner/accused to elaborate the fact of handing over the cheques for security purpose by putting the questions in detail. He has further submitted that if at all the complainant is not recalled for further cross-examination, prejudice will be caused to him.

4. Per contra, the learned counsel for respondent No.2 while defending the order passed by the learned Magistrate, has produced the list of events and dates and copy of the roznama. He has submitted that as per roznama, the adjournments were taken at the instance of the petitioner/accused on many occasions. The complainant is diligently prosecuting the matter since 2015 where heavy stake of Rs. 75,90,100/- is involved. He has further submitted that the complainant is a businessman and the money is required for the business. Hence, this Petition be dismissed.

5. Heard submissions. On perusal of the roznama and the list of events and dates submitted by the learned counsel for respondent No.2, it is found that there is much gap between the closure of the evidence and moving the application under section 311 of the Cr.P.C. The cross-

examination of the complainant was taken and it was closed on 4<sup>th</sup> January, 2017. Thereafter, the petitioner/accused did not lead any evidence. The statement under section 313 of the Cr.P.C. was recorded by the Court on 5<sup>th</sup> December, 2017. Thus, in the whole year, the petitioner/accused did not move the said application under section 311 of the Cr.P.C. This application was moved at late stage. In view of this, the order passed by the learned Magistrate cannot be faulted with. However, with a view to curtail the proceedings at this stage, the Petition is allowed so that the full opportunity is given to the petitioner/accused on the following conditions :

- (i) The order dated 3<sup>rd</sup> September, 2018 passed by the learned Metropolitan Magistrate, 7<sup>th</sup> Court, Dadar, Mumbai in C.C. No. 993/SS/2015 is hereby quashed and set aside;
- (ii) The cross-examination of the complainant by the petitioner/accused is restricted only on the point of issuance of the cheques for the purpose of security so further cross-examination on any other issue cannot be allowed. The cross-examination is to be completed in one session either on

11<sup>th</sup> or 12<sup>th</sup> March, 2019, subject to payment of costs of Rs. 1,00,000/- by the petitioner/accused to the complainant;

(iii) The payment of costs is a condition precedent for recalling the witness i.e., complainant for cross-examination.;

(iv) Both the parties shall remain present before the learned Magistrate on 11<sup>th</sup> March, 2019 and shall co-operate the learned Magistrate. Further arguments can be advanced.

(v) If the learned Magistrate is on leave, then it is to be completed within 2 days whenever he is available.

**(MRIDULA BHATKAR, J.)**